

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:

*SBC IP Communications, Inc.
Petition for Limited Waiver of
Section 52.15(g)(2)(i) of the
Commission's Rules Regarding
Access
to Numbering Resources*

CC Docket No. 99-200

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND OF THE PEOPLE OF THE STATE OF
CALIFORNIA ON PETITIONS FOR LIMITED WAIVER

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The California Public Utilities Commission and the People of the State of California (the CPUC or California) submit these Comments to the Federal Communications Commission (FCC or Commission) in response to the March 11, 2005 Public Notice¹ seeking comment on Petitions for Limited Waiver filed by the following parties: RNK, Inc. d/b/a RNK Telecom (RNK), Nuvio Corporation (Nuvio), Unipoint Enhanced Services d/b/a PointOne (PointOne),

¹ *Comment Sought On SBC IP Communications, Inc. Petition For Limited Waiver Of Section 52.12(g)(2)(i) Of The Commission's Rules Regarding Access To Numbering Resources*, CC Docket No. 99-200, *Public Notice*, DA 04-2144 (rel. July 16, 2004).

Dialpad Communications, Inc. (Dialpad), Vonage Holdings Corporation (Vonage), and VoEX, Inc. (VoEX) (me-too petitions).² The petitions seek the same limited waiver of 47 C.F.R. § 52.12(g)(2)(i)³ that the Commission recently granted to SBC Internet Services, Inc. (SBCIS), a provider of IP-enabled services such as Voice-over-Internet-Protocol (VoIP) and an affiliate of SBC Communications, Inc.⁴ A limited waiver like that granted to SBCIS would enable the petitioning VoIP providers⁵ to obtain telephone numbers directly from the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator (the PA), without obtaining state certifications as competitive local exchange carriers (CLECs).⁶

² RNK, Inc. *Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed February 7, 2005 (RNK Petition); Nuvio Corporation *Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed February 15, 2005 (Nuvio Petition); UniPoint Enhanced Services d/b/a PointOne *Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, filed March 2, 2005 (PointOne Petition); Dialpad Communications, Inc. *Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, filed March 1, 2005 (Dialpad Petition); Vonage Holdings Corporation *Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, filed March 4, 2005 (Vonage Petition); VoEX, Inc. *Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, filed March 4, 2005 (VoEX Petition).

³ Section 52.12(g)(2)(i) requires that an applicant for numbers provide evidence that it has state authority to provide telephone service in the relevant geographic area.

⁴ *Administration of the North American Numbering Plan*, CC Docket 99-200, *Order*, FCC 05-20 (rel. February 1, 2005) (*SBCIS Order*).

⁵ Although providers VoIP may also offer other IP-enabled services, these Comments will refer to them generally as "VoIP providers."

⁶ See *SBCIS Order* at para. 4.

In its Reply Comments on SBCIS' petition, the CPUC discussed several reasons for denying the limited waiver sought by SBCIS.⁷ The CPUC's positions have not changed. In light of the Commission's decision to grant a limited waiver to one VoIP provider (subject to certain conditions), however, the CPUC does not oppose granting the same limited waiver to similar VoIP providers, under the same conditions. In addition, the CPUC urges the Commission to affirm that such VoIP providers (including SBCIS) are subject to state numbering requirements (established pursuant to authority delegated by the Commission) *to the same extent that other companies are subject to those requirements.*⁸

With minor exceptions, each petitioning VoIP provider seeks the same limited waiver granted to SBCIS and commits to complying with the conditions imposed on SBCIS.⁹ Based on the information in the petitions, it appears that the petitioners are similar to SBCIS such that "comparable"

⁷ See, e.g., Reply Comments of the California Public Utilities Commission and the People of the State of California on SBCIP Petition for Limited Waiver (August 31, 2004) (CPUC Reply Comments) at 3-11.

⁸ Silence on other issues is not intended to indicate agreement.

⁹ For example, the Dialpad Petition states: "...Dialpad requests that the Commission allow VoIP providers without LEC affiliate flexibility in meeting the facilities-readiness requirement by submitting redacted contracts with carriers of similar forms of evidence to meet the Commission's facilities readiness requirement." Dialpad Petition at 7. Similarly, RNK "requests that the Commission make allowance [for the facilities readiness requirement] by specifically allowing 'indirect' as well as 'direct' interconnection agreements with the incumbent LEC." RNK Petition at 14 (footnote omitted). The CPUC does not comment on these requests at this time.

waivers are appropriate.¹⁰ The CPUC expects that the Commission will address, in its *IP-Enabled Services* proceeding, the appropriate regulatory status of companies providing IP-enabled services, including whether and to what extent such entities should be subject to traditional common carrier regulation. In the interim, however, if VoIP providers are able to obtain numbering resources without state certification, the state numbering requirements that are a condition of the Commission's limited waiver should explicitly be enforceable by state commissions.

SBCIS and some petitioners have argued that the need for state certification (and presumably being subject to state authority) creates a barrier to providing their services competitively,¹¹ suggesting that there may be resistance to state commission attempts to enforce numbering rules. However, a state should be able to enforce its numbering requirements with regard to any entity subject to those requirements, including VoIP providers. This approach is consistent with the Commission's intent in its decision approving SBCIS' request for a limited waiver, in which the Commission stated:

¹⁰ All petitioners indicate that they plan to provide IP-enabled services like VoIP on a commercial basis, and that they cannot obtain numbers directly from the NANPA or PA because they are not certificated in all states. *See* RNK Petition at 1-3; Nuvio Petition at 1, 4; PointOne Petition at 1, 4-5; Dialpad Petition at 1, 5; Vonage Petition at 1-2; VoEX Petition at 3-5.

¹¹ *See, e.g.*, RNK Petition at 6-7; Nuvio Petition at 4; PointOne Petition at 5; Dialpad Petition at 5-

To further ensure that the public interest is protected, the waiver is limited by certain conditions. Specifically, we require SBCIS to comply with the Commission's other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices,¹² including filing the Numbering Resource Utilization and Forecast Report (NRUF).¹³ We further require SBCIS to file any requests for numbers with the Commission and the relevant state commission at least thirty days prior to requesting numbers from the NANPA or the PA.¹⁴

These conditions are meaningless as a practical matter, however, unless the requirements are enforceable.

Moreover, in 1999 when the Commission delegated authority to the CPUC to engage in certain number conservation activities, the Commission emphasized the need to implement its activities in a technology-neutral manner:

Thus, the California Commission, to the extent it acts under the authority delegated herein, must ensure that numbers are made available on an equitable basis; that numbering resources are made available on an efficient and timely basis; that whatever policies the California Commission institutes with regard to numbering administration not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and that the California Commission not

6; Vonage Petition at 5, and; VoEX Petition at 8.

¹² See 47 C.F.R. Part 52.

¹³ See 47 C.F.R. § 52.15(f)(6)(requiring carriers to file NRUF reports).

¹⁴ *SBCIS Order* at para. 4.

unduly favor one telecommunications technology over another.¹⁵

Clearly, technological neutrality requires applying, and enforcing, California's numbering rules equally on both the LECs that have traditionally received numbers directly from the NANPA or the PA, and the VoIP providers that may similarly obtain numbers pursuant to the Commission's authority.

The alternatives to state enforcement are enforcement at the federal level by the Commission, or no enforcement at all. State commissions have developed numbering requirements that are consistent with federal rules and industry practices and guidelines, but that are also tailored to the needs of consumers and providers in their states. State commissions are therefore in the best position to apply state numbering rules consistently, including monitoring the activities of number holders, modifying requirements as necessary, and creating disincentives to noncompliance. Accordingly, the public interest is best served if the Commission explicitly affirms that state commissions may use their delegated authority to enforce numbering rules (to the extent the rules are consistent with that delegation of authority) on all companies that obtain phone numbers in their states.

¹⁵ *Id.* at para. 8 (footnote omitted).

Respectfully submitted,

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